

EXHIBIT 5
DATE 3/31/09
SB 452

Part 4

Federal Mandates Act

Part Compiler's Comments:

Severability: Section 9, Ch. 385, L. 1995, was a severability clause.

Effective Date: Section 10, Ch. 385, L. 1995, provided: "[This act] [2-1-401 through 2-1-408] is effective on passage and approval." Approved April 12, 1995.

Source: Part 4 is based on Title 24, Article 78, Colorado Revised Statutes.

Law Review Articles:

History and Evaluation of the Unfunded Mandates Reform Act, Gullo, 57 Nat'l Tax J. 559 (2004).

Re-entering the Arena: Restoring a Judicial Role for Enforcing Limits on Federal Mandates, Eastman, 25 Harv. J.L. & Pub. Pol'y 93 (2002).

2-1-401. Short title. This part may be cited as the "Federal Mandates Act".

History: En. Sec. 1, Ch. 385, L. 1995.

2-1-402. Legislative declaration. (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995, that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in this part may be construed to create a private cause of action.

History: En. Sec. 2, Ch. 385, L. 1995.

2-1-403. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

History: En. Sec. 3, Ch. 385, L. 1995.

2-1-404. State programs to implement federal statutes. (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

History: En. Sec. 4, Ch. 385, L. 1995.

2-1-405. Requirement for budget recommendation -- reporting on federal mandates -- savings.

Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

History: En. Sec. 5, Ch. 385, L. 1995.

Cross References:

Budget systems and program plans, Title 17, ch. 7. part 1.

2-1-406. Information regarding federal mandates. (1) The information prepared pursuant to 2-1-405 must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

History: En. Sec. 6, Ch. 385, L. 1995.

2-1-407. Report -- recommendations. (1) The governor shall examine the information received pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of 2-1-405.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

History: En. Sec. 7, Ch. 385, L. 1995.

2-1-408. Legislative review and oversight. (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

History: En. Sec. 8, Ch. 385, L. 1995.

Legislative Branch
Retirement Reserve
3/3/09

Data as of 10/24/08.
Data as of 2/13/09

Retirement Eligibility by Division					
	LAD	LFD	LSD		Total
Number of staff members (FTE)	53.5	17.5	56		127
Number eligible to retire within 5 years	7	7	20		34
Percent of staff eligible to retire in 5 years	13%	40%	36%		27%
Termination pay liability as of 10/24/08	\$127,310	\$326,041	\$396,177		\$849,528

Retirement Eligibility by Year Eligible to Retire						
	Immediate FY09	1 year FY10	2 years FY11	3 years FY12	4 years FY13	5 years FY14
Number eligible to retire (cumulative)	16	20	24	28	31	34
Liability as of 10/24/08 (cumulative)	\$572,308	\$665,949	\$706,866	\$783,826	\$815,768	\$849,528

Recommended Reserve Using a Percent of Eligible Staff						
	80%	70%	60%	50%	40%	30%
Anticipated number of retirements	19	17	14	12	10	7
Termination pay liability for retirements	\$565,493	\$494,806	\$424,120	\$353,433	\$282,746	\$212,060
Recommended Reserve			\$400,000			
Existing cash balance 10/24/08			\$330,577			
Additional reserve required			\$69,423			

Retirement Eligibility by Division					
	LAD	LFD	LSD		Total
Number of staff members (FTE)	53.5	17.5	56		127
Number eligible to retire within 5 years	7	7	18		32
Percent of staff eligible to retire in 5 years	13%	40%	32%		25%
Termination pay liability as of 2/13/09	\$125,378	\$429,671	\$490,715		\$1,045,764

Retirement Eligibility by Year Eligible to Retire						
	Immediate FY09	1 year FY10	2 years FY11	3 years FY12	4 years FY13	5 years FY14
Number eligible to retire (cumulative)	14	18	22	26	29	32
Liability as of 2/13/09 (cumulative)	\$702,310	\$809,374	\$851,429	\$948,074	\$992,026	\$1,045,764

Recommended Reserve Using a Percent of Eligible Staff						
	80%	70%	60%	50%	40%	30%
Anticipated number of retirements	18	15	13	11	9	7
Termination pay liability for retirements	\$681,143	\$596,000	\$510,857	\$425,715	\$340,572	\$255,429
Recommended Reserve				\$400,000		
Existing cash balance 2/28/09				\$329,423		
Additional reserve required				<u>\$70,577</u>		

EXHIBIT

5

DATE 3/31/09

SB 429

Legislative Branch Information Technology Reserve Account

5-11-407. Legislative branch reserve account. (1) There is a legislative branch reserve

account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for major legislative branch information technology projects, including the purchase of hardware, software, and consulting services for new initiatives and replacement and upgrading of existing systems.

(b) The money in the account may be expended only with the approval of the legislative council. The legislative branch computer system planning council may make recommendations to the legislative council for the use of the money in the account.

(3) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.

Legislative Branch Retirement Termination Reserve Account

5-11-120. Legislative branch retirement termination reserve account. (1) There is a

legislative branch retirement termination reserve account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for staff retirement termination pay in the legislative branch.

(b) The money in the account may be expended only with the approval of the appropriate branch division director for eligible termination pay expenditures for division staff.

(3) The account is limited to an amount to be calculated at the beginning of each biennium based on an analysis by branch division directors of the staff eligible for retirement within the biennium. For the 2009 biennium, the limit is set at \$400,000.

(4) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.